IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7835 of 1999

to

SPECIAL CIVIL APPLICATION No 7839 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARISHBHAI MANGALDAS THAKKAR

Versus

COLLECTOR BANASKANTHA

Appearance:

MR AR LAKHIA for Petitioners

MR KT DAVE, AGP for Respondent Nos. 1 & 2

MR BHARAT T RAO for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 31/07/2000

COMMON ORAL JUDGEMENT

In this group of petitions, the petitioners, five in number, have challenged the order dated 7.1.1999 (Annexure "C") passed by the City Survey Superintendent and Additional Mamlatdar, Deodar by which it is held that

the land on which the petitioners have put up their shops/cabins does not belong to the petitioners but is Government land and the petitioners have encroached on the same.

2. It is the case of the petitioners that the land in question was given to the petitioners on lease by respondent No.3-Deodar Gram Panchayat. The petitioner has also produced receipts issued in the years beginning from 1984 onwards issued by the Deodar Gram Panchayat. It is, therefore, submitted by the learned counsel on behalf of the petitioners that the petitioners have been regularly paying the rent/fees to the Gram Panchayat and that the petitioners could not be evicted.

3. This Court had granted ad-interim relief while admitting the petitions and issued notice as to interim relief.

4. In response to the notice of Rule, the City Survey Superintendent, Deodar has filed affidavit in reply dated 29.7.2000 stating that the petitioners have put up pucca constructions on the road passing from the Railway Station to old S.T. Bus Stand and because of this illegal encroachments on the public road, the authority thought it fit to remove the illegal encroachments. The notices were issued to the petitioners and they were asked to produce documents in support of their claim as to how they have occupied the land. It is submitted that the land in question is a public road and belongs to the Government and, therefore, respondent Nos. 1 and 2 have decided to remove the illegal encroachments put up by the petitioners and others. It is stated that in all there are 293 illegal encroachments on the road in question by way of cabins/shops and they are all required to be removed.

5. MR KT Dave, learned AGP appearing for respondent Nos. 1 and 2 and Mr BT Rao for the Deodar Gram Panchayat submit that the petition may be dismissed and the ex-parte order of interim injunction may be vacated.

6. Having heard the learned counsel for the petitioners, it appears to the Court that since the land in question is a public road and the land belongs to the Government, the petitioners did not acquire any right on the land in question even if the land was let out to them by the Gram Panchayat. Even otherwise, the possession of the land was taken over by the Government in the year 1982 and the receipts produced are for the subsequent years. Hence, it cannot be said that when the

petitioners put up their cabins/shops, they had any legal right to do so. Moreover, the road on which the cabins/shops are put up by the petitioners and others is between the Railway Station and the old S.T. Bus Stand. Hence, the authorities taking the apprehended action of removal of the encroachments/demolition of the constructions cannot be said to be acting arbitrarily or illegally.

7. At this stage, Mr Mehta, learned counsel for the petitioners submits that since the petitioners have been running their business in the shops/cabins in question since last more than 15 years, the respondents may be directed to give some alternative sites to the petitioners and others and the respondents may also be directed to give reasonable time to the petitioners to vacate the land.

8. Mr KT Dave, learned AGP opposes the request and submits that in any view of the matter the petitioners may be required to file undertakings lest the present occupants should not transfer the ownership/possession of the shops/cabins to other persons.

Mr Mehta states that the undertakings may not be necessary if the possession is to be handed over after four months.

9. Having regard to the aforesaid submissions, it appears to the Court that the interests of justice would be served if the petitioners are directed to make a representation to the respondents for granting the petitioners and others alternative land and by giving them time till 30.11.2000 for vacating the land.

10. In the result, while the petitioners are not entitled to get any reliefs as prayed for, the petitions are disposed of with an observation that in case the petitioners make a representation to the respondents within one month from today for alternative site for putting up their shops/cabins, the respondents shall consider the same sympathetically within a period of three months from the date of receipt of the representation. In order to enable the authorities to undertake this exercise and considering the fact that the petitioners have been occupying the land in question for the last more than 15 years, the respondents shall not evict the petitioners and other shop holders/cabin holders on the land in question between the Railway Station and the old S.T. Bus Stand till 30.11.2000.

In case the petitioners or other shop holders/cabin holders do not hand over possession of the shops/cabins by 30.11.2000, it will be open to the respondents to remove such shops/cabins on the public road between the Railway Station and the old S.T. Bus Stand without issuing any notice to any individual shop holder or cabin holder but it shall be done after making a public announcement a day in advance.

July 31, 2000 (M.S. Shah, J.)
sundar/-